

NOTICE

*Memorandum decisions of this Court do not create legal precedent. See Alaska Appellate Rule 214(d) and Paragraph 7 of the Guidelines for Publication of Court of Appeals Decisions (Court of Appeals Order No. 3). Accordingly, this memorandum decision may not be cited as binding authority for any proposition of law.*

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

MARVIN CAAL,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-11721  
Trial Court No. 3AN-13-03630 CR

MEMORANDUM OPINION

No. 6342 — June 1, 2016

Appeal from the Superior Court, Third Judicial District,  
Anchorage, Kevin M. Saxby, Judge.

Appearances: Morgan White, Assistant Public Defender, and  
Quinlan Steiner, Public Defender, Anchorage, for the Appellant.  
A. James Klugman, Assistant District Attorney, Anchorage, and  
Craig W. Richards, Attorney General, Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, Allard, Judge, and Suddock,  
Superior Court Judge.\*

Judge SUDDOCK.

As part of a plea agreement, Marvin Caal pled guilty to fourth-degree assault and fourth-degree criminal mischief in this case and to felony assault in a separate case. All of these offenses occurred on the same day. The felony assault occurred first;

---

\* Sitting by assignment made pursuant to Article IV, Section 16 of the Alaska Constitution and Administrative Rule 24(d).

Caal punched a man multiple times in the face, breaking the man's jaw. Approximately one hour later, Caal committed two misdemeanor offenses when he punched the manager of a bookstore, who was trying to help Caal find his jacket, and then damaged a cash register, telephone, and books in the store.

Under the plea agreement, Caal received a 2-year sentence for the felony assault. But the plea agreement left the sentence for each of the two misdemeanors to the discretion of the sentencing judge.

At a consolidated sentencing hearing before Superior Court Judge Kevin M. Saxby, the State emphasized Caal's extensive criminal history. The State noted that Caal had twelve prior convictions in Alaska, including a prior felony and two misdemeanor assaults. The State also alleged that Caal had more than fifteen convictions from other states. Those convictions included at least two assault convictions, three harassment convictions, and four theft convictions.

The judge sentenced Caal to the maximum 1-year term for each misdemeanor offense, and he ran these sentences consecutively to each other and to Caal's 2-year sentence in the felony case.

Under Alaska law, a worst-offender finding is required before a trial court can impose a maximum sentence.<sup>1</sup> In our initial consideration of this case, we concluded that the sentencing judge had failed to offer sufficient reasons for finding Caal a worst offender. We therefore issued an order directing the superior court to reconsider the matter.

On remand, the superior court again found Caal to be a worst offender. The court based its finding on Caal's extensive criminal history in Alaska, which the State further represented to include additional prior convictions for trespass and resisting or

---

<sup>1</sup> *State v. Wortham*, 537 P.2d 1117, 1120 (Alaska 1975).

interfering with an officer. The court also based its finding on Caal's underlying substance abuse problem and the antisocial and violent nature of Caal's crimes, and the court concluded that Caal posed a clear danger to the public. We conclude that this worst-offender finding is supported by the record.<sup>2</sup>

Caal also argues that his composite sentence is excessive when evaluated under the *Chaney* criteria.<sup>3</sup> In particular, Caal asserts that the superior court gave inadequate weight to Caal's rehabilitative potential.

But during the remand hearing, the sentencing judge thoroughly addressed the *Chaney* criteria. The judge found that Caal was a forty-two-year-old man with significant untreated substance abuse and mental health problems. These facts, coupled with the fact that Caal had repeatedly engaged in assaultive behavior, led the judge to conclude that Caal's rehabilitative potential was extremely low. Accordingly, the judge found that the most important sentencing goal was to isolate Caal to protect the public.

We have independently examined the record, and we conclude that it supports the sentencing judge's findings. While other judges might not have imposed as much time to serve for the two misdemeanors, we conclude that Caal's composite sentence is not clearly mistaken.<sup>4</sup>

---

<sup>2</sup> See *Howell v. State*, 115 P.3d 587, 593 (Alaska App. 2005) ("A worst-offender finding may be based on the facts and circumstances surrounding the offense, the defendant's criminal history, or both.").

<sup>3</sup> *State v. Chaney*, 477 P.2d 441, 443-44 (Alaska 1970); see also AS 12.55.005 (codifying the *Chaney* criteria).

<sup>4</sup> See *McClain v. State*, 519 P.2d 811, 813-14 (Alaska 1974) (applying clearly mistaken standard to sentence challenge).

*Conclusion*

The judgment of the superior court is AFFIRMED.